IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 15TH FEBRUARY 2007 / 26TH MAGHA 1928

Crl.MC.No. 4119 of 2006()

CC.170/2006 of CHIEF JUDL.MAGISTRATE, ERNAKULAM

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PETITIONER: ACCUSED

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1. VIJAYAN, S/O.NARAYANAN,
   SANJAY BHAVAN, NEDUNGOLAM CHERRY,
   PARAVOOR VILLAGE, KOLLAM.

2. SUSEEK, W/O.VIJAYAN,
   SANJAY BHAVAN, NEDUNGOLAM CHERRY,
   PARAVOOR VILLAGE, KOLLAM.

BY ADV. SRI.C.UNNIKRISHNAN (KOLLAM)
SRI.S.HARIKRISHNAN

RESPONDENTS: COMPLAINANT

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1. G.BHAGAVATH SINGH, S/O.K.GANGADHARAN,
   AGED 43, ISWARA, NEDUNGOLAM CHERRY,
   PARAVOOR, NOW RESIDING AT SAROJ GANGA,
   NEDUNGOLAM, PARAVOOR, KOLLAM.

2. STATE OF KERALA, REPRESENTED BY
   THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
   ERNAKULAM.

BY ADV. SRI.G.BHAGAVAT SINGH(PARTY-IN-PERSON)
PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 15/02/2007 , THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.4119 of 2006

Dated this the 15th day of February 2007

O R D E R

The petitioners are accused in a prosecution initiated on the basis of a private complaint filed by the first respondent herein. The first respondent in the said complaint has alleged that the petitioners herein have committed the offences punishable interalia under Sections 120B, 193, 465 and 34 I.P.C. Cognizance has been taken of the offence punishable under Section 465 I.P.C only.

2. The crux of the allegation raised in the complaint is that the petitioners herein had, with dishonest intention, forged a document produced by them in W.P.C No.17168/2005 before this court. I have called for the file in W.P.C No.17168/2005 for a correct and proper understanding of the dispute raised. The petitioners herein who were the petitioners in W.P.C No.17168/2005 had produced Ext.P1 which is the copy of a plaint. The said plaint was filed earlier before the civil court but subsequently there was an amendment to the plaint. The amendments were carried out in the plaint. The grievance of the

complainant/respondent herein is that the said copy of the plaint produced as Ext.P1 does not do justice to the really amended plaint. The respondent/complainant is a lawyer. He has explained his case. According to him, there has been four instances of alleged variation/deviation between the real amended plaint and the copy produced as copy of the said amended plaint as Ext.P1 in W.P.C No.17168/2005.

3. I have perused Ext.P1 produced in W.P.C No.17168/2005. All the four instances of alleged tampering have been subjected to close scrutiny by me. The following are the alleged instances of tampering:

i) At page No.16 of Ext.P1 against prayer B, the words ..... are not there in Ext.P1 though in the original plaint, they are there. This is a total misconception and a perusal of prayer B at Page No.16 clearly shows that the said words are there in Ext.P1.

ii) The second grievance is that the endorsement of amendment made by the counsel is not available in page No.17 of Ext.P1. That endorsement was made on the left margin of the original plaint but that is not available clearly in page No.17 of

Ext.P1. I have gone through Page No.17. The contention of the learned counsel for the first respondent is correct that the endorsement of amendment by the counsel is not there at all in so far as the second instance is concerned though some hazy blackening is seen in that portion of page No.17 of Ext.P1.

iii) The third and fourth instances of grievances are about the entry in the description portion of plaint A schedule and B schedule property. A careful examination of Ext.P1 at page No.17 clearly shows that there are unmistakable indications that there is an amended interpolation in both Schedule A and B property. Of course it is not very clear. It is evident that the original entry and the entry relating to amendment were made in different ink in the original plaint. Hence the mere fact that there is some difference in the photocopy produced as Ext.P3 between such original entries and the amended entries, cannot lead to a ready and instant inference that there has been any contumacious manipulation. It is absolutely clear from the entries relating to description and boundaries in Schedule A and B properties that there was no deliberate intention at all to suppress any fact or alter Ext.P1 to bring about any forgery.

This is evident from a naked eye examination of Ext.P1 available in W.P.C No.17168/2005. The mere fact that the amended portions do not appear clearly in Ext.P1 produced in W.P.C No.17168/2005 is no reason for any court to come to the conclusion that there was deliberate attempt to forge or tamper with Ext.P1.

4. Moreover, I have been taken through the decision rendered by this court in W.P.C No.17168/2005. No conclusion appears to have been canvassed, urged or reached on the basis of this alleged difference in the copy of Ext.P1 on the basis of the four instances referred above.

5. Powers under Section 482 Cr.P.C must be invoked in the case where the conscience of the court is satisfied that the allegations are not raised bonafide and are totally incorrect. I am convinced that it will be traversity of justice of the worst variety to compel the petitioners to stand trial on the basis of the alleged tampering of Ext.P1 produced in W.P.C No.17168/2005. I have, in these circumstances, no hesitation to come to the conclusion that proceedings in C.C.No.170/06 do not deserve to continue any further and the same deserves to be quashed.

6. In the result, this criminal miscellaneous case is allowed. C.C.No.170/06 pending before the learned Chief Judicial Magistrate, Ernakulam is hereby quashed.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006